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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 691

THE BRIGHT BROOKS LUMBER COMPANY,
Petitioner,

vs.

HENRY WEISS, TRUSTEE IN BANKRUPTCY OF JACK W. ROBINSON AND LOUIS DICKMAN, INDIVIDUALLY AND TRADING AS COPARTNERS AS EMERALD FURNITURE MANUFACTURING CO., BANKRUPTS.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT AND BRIEF IN SUPPORT THEREOF.

CHARLES POLIS,
JACOB K. MILLER,
PAUL BRANDEIS,
Counsel for Petitioner.

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To the Honorable Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

I.

This Petition for Certiorari arises out of the United States Circuit Court of Appeals for the Third Circuit, which affirmed on the fourteenth day of July, 1941 (R. 167), the judgment of the District Court of the United States for the Eastern District of Pennsylvania in the cause styled

The Bright Brooks Lumber Company v. *Henry Weiss, Trustee in Bankruptcy of Jack W. Robinson and Louis Dickman, Individually and Trading as Copartners as Emerald Furniture Manufacturing Co., Bankrupts;* a proceeding in reclamation in the matter of Jack W. Robinson and Louis Dickman, individually and as copartners trading as Emerald Furniture Manufacturing Co., in Bankruptcy, Cause No. 20895, which judgment was rendered on the 13th day of February, 1941 (R. 2).

On May 3, 1939, an involuntary petition in bankruptcy was filed against Jack W. Robinson and Louis Dickman, Individually and as Copartners Trading as Emerald Furniture Manufacturing Co., in the District Court of the United States for the Eastern District of Pennsylvania. On June 30, 1939, Henry Weiss was duly elected Trustee in Bankruptcy and qualified by filing his bond.

The Bright Brooks Lumber Company, a corporation of the State of Georgia, filed with the Referee in Bankruptcy, a petition for an order on said receiver to deliver to the petitioner certain described articles of wood working machinery which had passed into the possession of the Receiver as part of the bankrupts' Estate. An answer was filed by the Trustee in Bankruptcy and after testimony was taken, the Referee on September 21, 1940, dismissed the Reclamation Petition. Thereupon the petitioner filed a petition for a review of the Receiver's order and the questions of fact and law raised by the original petition for reclamation and answer thereto were certified to the District Court of the United States for the Eastern District of Pennsylvania. This controversy involves the unique Pennsylvania law of bailment leases.

The evidence offered to support the appellant's claim is as follows:

In the early part of 1938 (R. 49), Anna Dickman, was engaged in the furniture manufacturing business at 2218

Emerald Street, Philadelphia, having registered under the Fictitious Names Act, as doing business as "EMERALD FURNITURE MANUFACTURING COMPANY" (R. 73). The business was under the management of her husband, Louis Dickman, one of the bankrupts in these proceedings (R. 63, 68). In the conduct of the business, she made large purchases of lumber from the Bright Brooks Lumber Company, the appellant (R. 20), as a result of which she became heavily indebted to that firm (R. 109). Being unable to pay (R. 65), she, on April 6th, 1938, executed to the Bright Brooks Lumber Company and to John Cockey & Sons (R. 21, 22), a Bill of Sale of all of the machinery then in her place of business; and the Bright Brooks Lumber Company and John Cockey & Sons, as Lessors, and Anna Dickman, as Lessee, then concluded a Bailment Lease of the machinery (R. 121, 122), under which she continued to keep possession of the machinery and use it in her business.

Early in June, 1938, Anna Dickman, terminated her interest in the business (R. 31, 32). Then, Louis Dickman and Jack W. Robinson, the bankrupts, formed a partnership (R. 66, 67), and established their place of business at 3112-16 North 17th Street, Philadelphia, where they traded as the "Emerald Furniture Manufacturing Company" (R. 34). At about the same time Dickman and Robinson entered into a contract with the Bright Brooks Lumber Company, wherein the latter agreed to give the Emerald Furniture Mfg. Company certain financial assistance (R. 33). The machinery was then, at the appellant's request (R. 133), moved from Emerald Street to North 17th Street, where the partnership continued in business until the latter part of April 1939.

At the time Dickman and Robinson took over the business and the possession of the machinery, it was the intention of the parties to conclude a "written" bailment lease similar to that executed by Anna Dickman, and a draft of same

was given to J. Hector McNeal, Esq., to prepare a suitable agreement (R. 121, 129).

Shortly after the business was moved to North 17th Street, the Bright Brooks Lumber Company purchased certain additional machinery from one, Alfred S. Knesby, of Upper Darby, Pennsylvania, a deal in woodworking machinery (R. 36). This machinery was delivered by Knesby to the place of business of the Emerald Manufacturing Company on North 17th Street (R. 36, 71). The actual purchase was made by Dickman (R. 35), in the name of the Bright Brooks Lumber Company (R. 71, 79), and pursuant to their authority. The purchase price was paid by the Bright Brooks Lumber Company (R. 37, 43), and the invoices for the machinery were in the name of the Bright Brooks Lumber Company (R. 47, 49). It was the oral agreement between Dickman and Robinson and Cockey, acting as agent for the Bright Brooks Lumber Company that the machinery was to remain the property of the Bright Brooks Lumber Co., under the terms of the agreement of the parties of June 18th, 1938 (R. 40, 106).

Although J. Cockey & Sons, appeared in the various instruments, above referred to, as co-owner of all this machinery with the Bright Brooks Lumber Company, Cockey has since acknowledged that he has no proprietary interest in it and has since quit-claimed all of his rights in favor of the Bright Brooks Lumber Company (R. 45, 46, 47, 132).

On April 24th, 1939, Dickman and Robinson, trading as the Emerald Furniture Manufacturing Company, executed a written and general assignment of all of their assets, for the benefit of creditors (R. 91, 96).

Upon the petition and answer, considerable testimony was taken before the Referee who entered an order dismissing the petition (R. 155). Thereupon, the petitioners filed a request for a review and the matter was, in due

course, argued before Ganey, J., who dismissed the petition for a review and sustained the Referee (R. 155).

II.

The Supreme Court of the United States has jurisdiction to review the judgment of the United States Circuit Court of Appeals for the Third Circuit on petition for certiorari by virtue of Section 240, as amended, of the Judicial Code (Sec. 347, Tit. 28, U. S. C. A.), and by court Rule 38 (5b) of the rules of the Supreme Court of the United States, 1939, the decisions of the Circuit Court of Appeals being in conflict with the decisions of the Supreme and Superior Courts of the Commonwealth of Pennsylvania, being the courts of last resort in said State. The decision of the Circuit Court involves the important question of Pennsylvania personal property law.

III.

The questions presented by the petitioner are:

(a) Where the owner of chattels transfers title in them to a creditor as security for payment of a debt and enters into a bailment lease with the creditor, whether such a transaction is valid in law, *inter parties.*

(b) Where one having title in chattels directs the bailee of same to deliver them to another, after which a bailment contract is executed between the owner of the legal title and the new bailee, whether such a transaction is valid, *inter parties.*

(c) Where one purchases chattels and directs the vendor to deliver them to another, after which a bailment agreement is executed between the owner of the legal title and the bailee, whether such a transaction is valid, *inter parties* and as to third parties.

(d) Where the owner of chattels and the bailee of same enter into a written agreement whereby possession is retained by the bailee under an agreement to pay rental for use, and contains a stipulation that the bailee may purchase the chattels upon payment of a specific sum, whether such a transaction is a bailment or a sale.

IV.

The reasons relied on for the allowance of the writ are as follows:

(1) The decision of the Circuit Court of Appeals adopting *per curiam* the decision of the District Court of the United States for the Eastern District of Pennsylvania held that the instrument executed between the petitioner and the bankrupts is not a bailment lease but a conditional sale and thus invalid for want of recording. This conclusion is contrary to the following decisions of the Supreme and Superior Courts of the Commonwealth of Pennsylvania and of prior decisions of the Circuit Court of Appeals for the Third Circuit: *General Motors Acc. Corp.* v. *Hartman,* 114 Pa. Sup. Ct. 544; *Styles* v. *Seaton,* 200 Pa. 114; *General Motors Acc. Corp.* v. *Horton,* 85 F. (2d) 452; *Jacquard Knitting Mch. Co.* v. *Vennell,* 59 F. (2d) 496.

In all of these cases, it was held that where there was an express reservation of title of a chattel in possession of another and the parties have expressed their intention to create a bailment, the relation of bailor and bailee exists and not that of conditional vendor and vendee and that the retention of title is valid as against the attack of creditors of all *bona fide* purchasers from the bailee.

(2) The decision of the Circuit Court of Appeals, adopted *per curiam,* a decision of the District Court which held that a transaction evidenced by an agreement purporting to be a bailment was, nevertheless, invalid for the reason that

there was not at the time of the execution of the agreement, a change of possession of the chattel. All the uncontradicted evidence disclosed that Anna Dickman was not a member of the partnership and that possession of the chattels in question were delivered to the partnership at the time of the agreement between the parties. The Circuit Court decision is in conflict with the following decisions of the Superior Court of Pennsylvania which have held that a claimant of chattels does not have to prove a title against the whole world but only as to the defendant in the proceedings from whom the Trustee derived his rights: *Kindig* v. *Wertz*, 116 Pa. Sup. Ct. 456; *Gallagher* v. *Motors Fin. Corp.*, 105 Pa. Sup. Ct. 335; *Riccardi Motor Car Co.* v. *Weinstein*, 98 Pa. Sup. Ct. 41.

(3) Each of the above conflicts is on an important question of local law.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

The opinion of the District Court of the United States for the Eastern District of Pennsylvania has not yet been reported nor has the opinion of the Circuit Court of Appeals for the Third Circuit.

II.

(a) The date the judgment of the Circuit Court of Appeals from which Petition for Certiorari was filed was July 14, 1941.

(b) This Petition for Certiorari was filed on the 9th day of October, 1941.

(c) The statutory provision which sustains jurisdiction of this Court is Judicial Code, section 240, as amended (Section 347, Tit. 28, U. S. C. A.). Jurisdiction of this Petition for Certiorari is also found in Rule 38 (5b), Supreme Court Rules, 1939.

(d) The United States Circuit Court of Appeals for the Third Circuit has decided an important question of local law in conflict with applicable local court decisions. The specific conflicts have been pointed out in the Petition for Certiorari and will be further treated in argument under the questions before this Court for decision.

III.

A full history of this case appears in the foregoing petition, Section I.

IV.

First Specification of Error.

The United States Circuit Court of Appeals for the Third Circuit erred in sustaining and in affirming the position

of the District Court of the United States for the Eastern District of Pennsylvania, where it held, that the agreement between the petitioner and the bankrupts was a conditional sale and not a bailment lease (R. 159, 165).

Summary.

The agreements in question (R. 11, 12) provide:

> "We, the petitioners, will also rent you our machinery, now used by you at 2218 Emerald Street at ½% per month to cover interest based upon value of $3069.34. * * * You agree to purchase our machinery at the expiration of this agreement, or at any earlier date you may desire, at the aforementioned price of $3069.34 and agree that all materials of every transaction shall remain the property of the Bright Brooks Lumber Company and John Cockey and Son, we agree to turn it all over to you at any time you pay us the amount due."

Argument.

This type of agreement has been held to be a bailment in *General Motors Acceptance Corp.* v. *Horton,* 85 F. (2d) 452; wherein the court held:

> "The contract is in the form of a lease and provides for a definite term, a fixed rental, and an agreement for the return of the automobile at the end of the term. It is true that the so-called rentals amount to more than the regular purchase price of the automobile, which was $827, while the total rentals amount to $952. The first installment of rental due upon delivery was $268, and the following rentals were $58 per month. When the total rentals were paid, the 'lessee' either had to surrender the automobile, or he could purchase it for the nominal sum of $1. The contract further provided that the appellant might repossess or 'resell' the automobile upon noncompliance by the lessee with the terms of the contract. The term 'resell' indicates that the

first transaction was a sale and not a bailment lease, but that term stands alone and is not in harmony with the other provisions of the contract, and is not decisive of the issue.

It is evident that the parties to the contract intended by it to accomplish two results: first to retain, in the lessor, title to the automobile as against the bankruptcy or other unfortunate circumstances of the lessee; and, secondly, to provide that the lessee might, after payment of all the rentals purchase the automobile for a nominal sum. It must be admitted that this transaction in fact, though not in form, amounted to a conditional sale. But to construe such contracts as bailment leases is a policy, regardless of what may be thought of it as a principle of law or business, which has long been pursued in Pennsylvania, and her courts have uniformly sustained them as bailment leases. General Motors Acceptance Corporation *v.* Hartman, 114 Pa. Super. 544, 174 A. 795; Leitch *v.* Sanford Motor Truck Co. et al., 279 Pa. 160, 123 A. 658; Commonwealth *v.* Motors Mortgage Corporation, 297 Pa. 468, 147 A. 98. This court has felt constrained to follow the decisions of the Pennsylvania Courts in construing such contracts. Gotthold *v.* Crompton & Knowles Loom Works (C. C. A., 3rd Circuit), 5 Am. B. R. (N. S.) 908, 4 F. (2d) 50; Jacquard Knitting Machine Co. Vennell (C. C. A. 3rd Cir.), 21 Am. B. R. (N. S.) 524, 59 F. (2d) 496."

Nor does the fact that the agreement fails to provide for a return of the chattels at the end of the term, invalidate the agreement as a bailment. That was held by the Circuit Court of Appeals for the Third Circuit. In *Jacquard Knitting Machine Co.* v. *Vennell,* 59 F. (2d) 496, it was held:

"True, the third lease did not contain a stipulation for return of the machines at the end of the bailment. But the absence of such stipulation is not controlling, for, as said in Federal Sales Co. of Philadelphia *v.* Kiefer, 273 Pa. 42, 115 A. 454, 'it is unnecessary for a bailment lease to stipulate for a return of the property, and the absence of a provision to that effect in those

here in question is not controlling.' Stiles *v.* Seaton (200 Pa. 114, 49 A. 774), supra; Edwards' Appeal, 105 Pa. 103; Jones *v.* Wands, 1 Pa. Super. Ct. 269; Porter *v.* Duncan, 23 Pa. Super. Ct. 58."

Furthermore the fact that the contract contains an agreement by the bailor to sell the chattels to the bailee does not invalidate it as a bailment and this was held by the Supreme Court of Pennsylvania in *Styles* v. *Seaton,* 200 Pa. 114, where the Bailor agrees to rent and the said William C. Seaton and Henry C. Barnes agreed to hire the described chattels for monthly rentals which over the period of the entire term of bailment amounted to the contract price, upon the payment of which title would pass to the bailee.

It is respectfully submitted therefore, that a comparison of the instant case with the above cited cases discloses an irreconcilable conflict and that the Circuit Court of Appeals for the Third Circuit in the instant case erred in not following the prior decisions of both the Circuit Court of Appeals and the Supreme Court of Pennsylvania.

V.

Second Specification of Error.

The United States Circuit Court of Appeals for the Third Circuit erred in affirming the District Court of the United States for the Eastern District of Pennsylvania wherein it was held (R. 157, 158):

> "No consideration was shown for the transfer of the business from Louis Dickman to Anna Dickman, that she had no title to convey to Bright Brooks Lumber Company by the alleged Bill of Sale of April 18, 1938 and accordingly the Bright Brooks Lumber Company took no title which it could retain."

Summary.

One of the bankrupts, Louis Dickman, had, at several different places in Philadelphia, under his own proper name

been engaged in the furniture manufacturing business for some years prior to 1938 (R. 76, 77), in which he used a part of the machinery involved in this action. In March, 1938, Anna Dickman started business on Emerald Street, in the City of Philadelphia, under the trade name of "Emerald Furniture Manufacturing Company", which she registered under the Fictitious Names Act of Pennsylvania, specifying herself as owner. Then, Anna Dickman executed a Bill of Sale of the machinery to the Bright Brooks Lumber Company the petitioner, for a good and valuable consideration. The petitioners then leased the machinery back to Anna Dickman without change of possession.

In June, 1938, Louis Dickman and Jack W. Robinson formed a partnership to conduct a furniture manufacturing business under the trade name or style of Emerald Furniture Manufacturing Company on North 17th Street, Philadelphia. Anna Dickman being in default under her agreement with the petitioners, the machinery, on the instructions of the petitioner was moved from Emerald Street on or about July 15, 1938 and delivered to the bankrupts at their place of business on North 17th Street. It was in connection with this latter transfer of possession that the agreement between the petitioner and the bankrupts, which is the subject of consideration under the First Specification of Error, was concluded. Thereafter, the bankrupts were in default in their agreement with the petitioner and on May 3, 1939, were petitioned into bankruptcy.

Argument.

It is conceded by the petitioner that Louis Dickman's creditors prior to the filing of the petition in bankruptcy could have attacked the validity of the transaction between the petitioner and Anna Dickman. It is also conceded that Anna Dickman's creditors could have done the same thing. However, this is a controversy between the Trustee in Bank-

ruptcy of Louis Dickman and Jack W. Robinson, individually and as co-partners trading as Emerald Furniture Manufacturing Company. Anna Dickman had no creditors and Louis Dickman had no prior creditors. Obviously, therefore, the only creditors who could have attacked the transaction could not appear because they did not exist. Whether or not there was any consideration to support the transfer of the machinery from Louis Dickman to Anna Dickman is immaterial in this case and has so been held by the Appellate Court of Pennsylvania.

In *Kindig* v. *Wertz,* 116 Pa. Super. Ct. 456; *Gallagher* v. *Motors Finance Corp.,* 105 Pa. Super. Ct. 335, and *Riccardi Motor Car Co.* v. *Weinstein,* 98 Pa. Super. Ct. 41, it was held: That a claimant to chattels did not have to prove his title as to the whole world but only as to those appearing in the action. Where parties to an action, which in this case was the petitioner for claimant and Trustee in bankruptcy, defendant asserted no rights beyond those existing in Anna Dickman. In *Commercial Car Company* v. *Murphy & Son,* 275 Pa. 105, it was held: The Trustee in Bankruptcy in this case is not admitted to assert title as against the petitioners. As Trustee in Bankruptcy, Section 70, he steps into the shoes of the bankrupts before the bankrupts are precluded from asserting title as against the petitioner by virtue of their agreement. Whatever rights the Trustee in Bankruptcy may assert is under Section 70 (e) of the Bankruptcy Act as an attaching creditor.

Therefore, under the decisions in Pennsylvania above quoted, it was not necessary for the petitioner to prove Anna Dickman's title but that she received consideration to support the transfer of her title to the petitioner.

Conclusion.

Summarizing the whole of the Brief, it is respectfully submitted that the court erred in holding that the agree-

ment between the petitioner and the bankrupts was a conditional sale rather than a bailment lease; that the petitioners had failed to prove Anna Dickman's title and in refusing to hold that the order of the District Court dismissing the petitioner's reclamation petition was in error.

The decision of the United States Circuit Court of Appeals for the Third Circuit in the instant case, if allowed to stand, will throw such grave doubts on the legality of bailment leases in Pennsylvania as to disturb the chattels and rights of thousands of persons holding title under such agreements of inestimable value.

It is therefore respectfully submitted that this case is one calling for the exercise of this Court of its supervisory powers by granting a Writ of Certiorari and thereafter reviewing and reversing the decision of the lower court.

CHARLES POLIS,
JACOB K. MILLER,
PAUL BRANDEIS,
Counsel for Petitioner.

LEVI, MANDEL & MILLER,
Of Counsel.